U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

DEC 5 2000

File: EAC-99-140-51268 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(P)(i)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a professional golfer. He filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. 1101(a)(15)(P)(i). The petitioner seeks to employ the beneficiary temporarily in the United States as a golf caddie for a period of 5 years.

The director denied the petition finding that a professional golf caddie does not qualify for P-1 nonimmigrant classification as an athlete.

On appeal, counsel for the petitioner argued, in pertinent part, that evidence has been submitted from an official of the PGA Tour affirming that a professional caddie is recognized as an athlete by the organization and that the petition should be approved.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A) of the Act, 8 U.S.C. 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

> (i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and
>
> (ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

A letter dated January 5, 1999, from [redacted] Vice President, Community Affairs, PGA Tour was submitted to support the petition. [redacted] testified, "As the leading organization and authority in the sport of golf, we are in a position to categorically define a professional caddie as an athlete and an active participant in this competitive sport."

In the decision, the director found that the position of caddie was neither that of an individual athlete nor that of a member of an athletic team for the purpose of P-1 nonimmigrant classification.

On appeal, counsel argued that the director did not accord due weight to the letter from the PGA stating that it considers professional caddies as athletes.

On review, the Service acknowledges the PGA's opinion and does not dispute that opinion. A professional caddie employed by a golfer in internationally recognized tours may certainly be considered an "athlete and active participant" in that sport. At issue in this proceeding, however, is whether a caddie is eligible for P-1 classification in his/her own right under the pertinent federal regulations. Simply performing duties that are considered those of an "athlete" within a sport does not necessarily render an alien eligible for classification as a P-1.

8 C.F.R. 214.2(p)(1)(ii) provides for P-1 classification of an alien:

> (1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance...

As noted by the director, despite the high level of skill required of a caddie employed by a golfer on a pro golf tour, a caddie does not perform as an athlete in a specific competition as contemplated by the regulations. Also as noted by the director, there is no evidence that a pro golfer and his/her caddie qualify as an athletic team as defined at 8 C.F.R. 214.2(p)(3). The PGA may recognize the skills required of a professional caddie to be those of an athlete, but the performance of the duties of a caddie is not the performance of an athlete in a specific athletic competition. Simply put, it is the golfer who competes, not the caddie.

It is noteworthy that the regulations at 8 C.F.R. 214.2(p)(3) recognize the contribution of essential support aliens by defining them as "a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien." A caddie may be "highly skilled and essential to the performance" of a professional golfer as a principal alien, but the Service is not persuaded that the duties of a caddie are those of an individual P-1 athlete or of a principal alien in this classification.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.